

Land tenure and management reforms in East and Southern Africa – the case of Botswana

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Abstract

Since attainment of independence, almost every country in East and Southern Africa has introduced some kind of land reform aimed at reconciling indigenous land tenure practices and those introduced by colonial regimes. The reforms have centred on modification of tenurial rules on access, ownership, administration and transfer of land rights coupled with land redistribution and/or restitution in some countries. With the exception of a few countries, such as Botswana, land reforms have largely remained on statute books with little to show on the ground. The paper gives an overview of land reforms in East and Southern Africa, taking Botswana as a case study. It notes that although Botswana has largely been successful in implementing land reforms, it is currently experiencing land tenure problems, especially in peri-urban settlements and inner city low-income areas, despite government's enhanced control over local land administrative structures. The paper ends with suggestions on how to contain the current problems. © 2000 Elsevier Science Ltd. All rights reserved.

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Introduction

On attainment of independence most countries in Africa inherited dualistic land tenure and management systems consisting of customary land tenure administered by traditional leaders and statutory or modern land tenure systems controlled by organs of central governments. While customary land tenure systems were viewed as primitive and retrogressive, statutory land tenure systems were considered alien, discriminatory, complicated and unfavourable to indigenous populations. Consequently, most post-independence governments were uncomfortable with the coexistence of the two systems and sought to amend or reform them in various ways. Some countries tried to do away with customary land tenure systems while others have taken less radical approaches of introducing modest changes gradually. Botswana and Senegal have been hailed as shining examples of the latter category.

The purpose of this paper is to review and evaluate Botswana's experience in order to identify the positive

elements and areas for further improvements. The paper starts with a review of modern and customary land tenure and management systems in East and Southern Africa. It then discusses advantages and disadvantages of both land tenure systems and explores various land reform approaches adopted in the region and Botswana in particular.

Customary land tenure

Before colonisation and the creation of contemporary nation states, land in most parts of Africa was governed by traditional procedures and rules on land utilisation, access and transfers commonly known as *tribal, traditional or customary land tenure*. Being traditional, the procedures and rules were social constructs whose essential elements were passed verbally, by way of example or practice from generation to generation belonging to a particular community or tribe. In the course of transmission over time, as well as through experiments, good workable elements of the tenure system are retained and poor ones dropped to suit new socio-geopolitical and climatic conditions. In other words, customary

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land tenure systems, like any other social constructs, were dynamic rather than static but retained key elements.

The major outstanding feature of the various customary land tenure systems was the *Right of Avail* that was uniformly applied to all and automatically shared by all people belonging to a particular community, tribe or clan (Schapera, 1943; Jeppe, 1980; Bieseles et al., 1991; Shaw and Mlika, 1988; Masale, 1988; and Mugenyi, 1988). It was from this Right of Avail that all other rights (individual or common) were deduced. All siblings had equal right to access land although inheritance of the rights was genealogical on either paternal or maternal lineage such that they formed a chain of spouses and siblings radiating from the core in line with the family tree. New households would usually be allocated their own pieces of land for erection of homesteads or cultivation out of the family or clan reserves. Otherwise, the chief or headman would give them land from the general tribal reserves. All pieces of land acquired through allocation by the chief or headman or by inheritance, remained, in perpetuity, the exclusive property of the concerned households as long as the allottee continued to belong to the community and actively utilised the land. Unallocated land was accessible to all and was utilised for communal activities such as grazing, hunting and forestry.

Although land was administered by chiefs, headmen, clan or tribal elders, ownership was vested in the respective jural community such as a tribe or clan. Contrary to common Eurocentric misconception, chiefs, headmen and elders did not own the land they administered. When land was not actively used for cultivation other members of the community or tribe had a right to harvest natural resources (honey, firewood, etc.) or graze their animals on those farms. Similarly, in times of need land could be reallocated to various subgroups that constitute the tribe or jural community. As Bieseles et al. (1991) note, reciprocal access by other members of the community and other forms of extended land use rights developed to ensure well rounded and adequate supply of land and equal access to land resources by all. These extended land rights were necessary in the light of differences in land suitability that characterised the region. Essentially what this meant was that individual land rights were inferior to communal land rights which anyone could and did exercise as and when necessary. Community members were, therefore, free to travel, hunt and collect or harvest natural resources anywhere within their territory provided they did not cause damage to improvements (e.g. crops) on land. It is worth mentioning here that the above is a generalised description of the thousands of customary land tenure systems that were operative in the region. Any attempt to detail each or some of them is not only unnecessary but beyond the scope of the present paper.

Modern or statutory land tenure systems

Statutory or modern land tenure systems and their respective management structures were exported wholesale to Africa from Europe as part of the colonisation packages. Through a series of proclamations, decrees, orders in councils, etc. tracts of land were expropriated from Africans by European settlers and colonial administrators and, subsequently, territories divided into native reserves and European land (Ng'ong'ola, 1996; Shivji, 1998). While customary or traditional land tenure provisions remained operative in areas reserved for natives, exogenous or so-called modern land tenure systems were imposed on expropriated land. Settler populations were later issued with fee simple or other forms of ownership titles by colonial governments. The remainder of the expropriated land was vested in governments of the colonising power (as crown land) for allocation to future settler populations and their siblings.

In modern land tenure systems, land rights are defined by law and supported by documentary evidence — the title deed — unlike under customary law where active occupation or usage is the main evidence of “ownership”, entitlement or existing interest. The modern land tenure systems imported with them the concept of “land ownership”. Shivji (1998, pp. 85, 86) identifies two meanings of land ownership — one based on Roman law and the other on market capitalism. He defines land ownership as “a bundle of rights to own, control, use, abuse, and dispose of land” under Roman law and as “ownership of certain interests (bundle of rights) in land which are defined, secure, guaranteed and, most important of all, can be transferred (i.e. sold) on the market at the will of the owner” under market-capitalism. The first definition is closely related to freehold tenure — an offspring of feudalism — under which ownership is exclusive and perpetual. The above concepts differ substantially from African or indigenous concept, where although the bundle of rights is defined, secure and guaranteed, none may be transferred, for free or consideration, to whomever one chooses as and when except on inheritance by lineage. In other words, under customary law, land may not be sold. However, the market-capitalist definition of land ownership is closer to African customary concept than the one based on Roman law.

Modern versus traditional land tenure

There are contrasting views as to whether modern land tenure and management systems are better than traditional ones or vice versa. Those in favour of the traditional land tenure systems have hailed them on three major areas (for example, Mugenyi, 1988; Jeppe, 1980; Bieseles et al., 1991). First, they have argued that by upholding the right of avail to every household within

the community, the system prevents concentration of land ownership among a few people and avoids landlessness. Secondly, the fact that communal land rights supersede individual land rights ensures equal and unlimited access to land resources by all community members. Thirdly, and emanating from the above two, traditional land tenure systems guarantee peace and stability among community members as well as efficient use of natural resources — honey, firewood, wild fruits and animals, pasture land, water resources and so on. In short, it is argued that traditional land tenure systems, promote peaceful coexistence survival for everyone. On the other hand, modern or statutory land tenure systems especially those based on Roman law (e.g. freeholds), are criticised for promoting landlessness, widespread hunger, poverty and socio-political instability. They argue that access to land is very critical to Africans since most families in Africa today depend on both wage or cash employment and subsistence farming. Monetary earnings are remitted to or spent with farming family members in return for farm produce. Others have argued that in the absence of social security and inadequate retirement and/or re-trenchment benefits, wage earners need land to fall back to in those bad times. Some supporters of the traditional land tenure system consider the retention of the traditional system as one way of preserving African or indigenous culture and values.

Despite the above-listed positive views on traditional land tenure, some scholars, administrators, investors, financial credit managers and other modernising elements have a different opinion. They argue, principally, that traditional land tenure and management systems do not fit well with contemporary socio-economic realities. Misgivings on traditional land tenure systems include the following:-

- (a) Decision-making is controlled by conservative elderly people who are not receptive to modernisation or the introduction of new ideas and techniques in the use of land.
- (b) Communal land ownership does not encourage individuals to invest substantially in land improvements. It instead encourages shifting cultivation and lack of commitment to land betterment.
- (c) Matrilineal land inheritance (which does not empower men who are considered heads of households in contemporary societies) discourages male cultivators from investing in improved land husbandry measures. On termination of marriage — by divorce or death — the ex-husband is obliged to return to his mother's clan or family.
- (d) Individuals are unable to use land as collateral and are, therefore, unable to access credit finance.
- (e) The right of avail and inheritance by all siblings leads to widespread land fragmentation which leads to uneconomic land holdings, decreased land pro-

ductivity and discouragement of a vigorous land market.

- (f) Chiefs, headmen and other land administrators tend to abuse their responsibilities by allocating large tracts of land to themselves or their associates. They are also accused of favouring individuals who provide them with money, beasts, alcohol or other material goods and/or services (Ng'ong'ola, 1988; Shaw and Mlia, 1988; Mugenyi, 1988; Mathuba, 1989)

While some of the above misgivings are based on Eurocentric concepts and societal values, the majority of the criticisms are rooted in the need for documented, transferable and legally binding forms of land rights — rights that would protect holders' entitlements to occupy, use, let or mortgage their respective pieces of land. It is argued that secure land rights will promote increased investment into agricultural and commercial production of goods (crops, livestock, houses, schools, clinics, hotels, roads, etc.) and services which will in turn stimulate other national markets and production systems leading to improved earnings and living standards. It is further argued that well-defined and secure land rights will promote social stability as well as proper land management, utilisation and orderly developments.

Approaches to land reforms

Land reforms in most East and Southern African countries have mainly been geared at answering three basic questions:

- (i) How can indigenous or aboriginal populations regain land that was converted into crown and freeholds for European settler communities?
- (ii) How can traditional land tenure systems and their respective management structures be modified to meet today's changing circumstances without creating landlessness or compromising households' abilities to feed and fend for themselves?
- (iii) How can the government protect and guarantee peoples' equal access and rights to land while ensuring efficient and wise use of land?

To address the above questions, most governments have, over time, either opted for land redistribution; or land restitution; or tenure reforms; or combination of two or all three of the above. According to Carey-Miller (1998), land redistribution is an open-ended process that facilitates access to land by disadvantaged people while restitution is about giving back land to dispossessed communities. Under land redistribution, land rights are apportioned to individuals while under restitution tracts of land are given back to jural communities — communities that were deprived of the aboriginal rights. Land tenure reform is the upgrading of land rights or the

introduction of new systems of land holdings, rights and/or ownership. As Bruce (1998) notes, land tenure reform does not redistribute land but rights in land — it changes the rules that govern access, utilisation, ownership, administration and transfer of land rights in a given community. Within the region and due to historical reasons, attempts at land redistribution have been carried out in Kenya, Zimbabwe, Namibia and South Africa, while land restitution has only been tried in South Africa. According to Bruce (1998), only Swaziland has had no attempts on land tenure reforms.

Bruce (1998) classifies land tenure reforms undertaken by post-independence governments in the region into two categories:

- (i) Replacement reforms — whereby previous rules on access, ownership, administration and so on were replaced with new ones. In some countries (e.g. Tanzania, Mozambique and Ethiopia) traditional and freehold land rights were either repealed or abolished and land ownership vested into the state while in others (e.g. Kenya and Malawi) community interests in land were eliminated and replaced with private land ownership. In Zambia, Sudan and Uganda partnerships of private and state ownership of land were created.
- (ii) Adaptation reforms — whereby modifications or changes being introduced take cognisance of and are based on both indigenous/traditional and modern/exogenous tenure rules, rights and management structures. Botswana is one of the few countries that opted for this approach.

It is worth noting that land reforms have been directed at both traditional and modern land rights and tenure systems as instituted by colonial regimes. It appears the main goal has been to create systems that do not completely reject either. In Malawi, for example, the land ownership titles were not given or registered to individuals but to family units (Ng'ong'ola, 1988; Shaw and Mlia, 1988), which is really a compromise between Dutch–Roman concept of land ownership and indigenous communal ownership of land. A number of scholars and practitioners (e.g. Lamba and Kandoole, 1988; Kombe, 1994; Bruce et al., 1996; Shivji, 1998; Barry, 1998) have studied and evaluated the various reforms instituted in each country. In summary, they note that land reforms have not been adequately implemented in most countries. In some countries, as Bruce (1998, p. 47) observes, “reform legislation remained on books for years, having no impact on actual access to land or security of tenure” which has created greater insecurity, lawlessness, social and political instability — the recent land invasions in Zimbabwe being a case in point. The present paper is an attempt to contribute to the evaluation and recommendations for effective reforms taking Botswana as a case study.

Land reforms in Botswana

Introduction

Botswana, with a population of about 1.5 million inhabitants, is a landlocked country in the centre of the southern Africa region. More than two-thirds of its land area is covered by the Kalahari Desert which supports sparse vegetation but lacks adequate surface water and rainfall. More than 87% of the country's population resides on a 75–100 km strip of hard veld land along its eastern border. Most rains occur between October and April but are extremely variable both in time and space.

Botswana has, since attainment of independence in 1966, experienced tremendous socio-economic changes — from one of the poorest countries in Africa to one of the richest. Botswana's fortunes emanate from the discovery and exploitation of diamond and copper–nickel mineral deposits in the late 1960s coupled by a stable political climate. The economic boom has been accompanied by rural–urban migration and its associated rapid urbanisation. The average urban annual growth rate between 1964 and 1991 was 10.3% while the proportion of the population living in towns and cities increased from 4 to 22% during the same period. The number of towns/cities increased from two to eight.

The economic boom and its attendant rapid urbanisation have been accompanied by a multitude of environmental, social, and cultural transformations, including views on access and utilisation of land. The present paper is an attempt to evaluate land tenure and management reforms evolved in the light of the changing settlement patterns and the emerging socio-economic needs.

Post-independence land tenure reforms

As mentioned above, Botswana is one of the countries that have adopted an evolutionary approach to land reforms — that is, “from customary rules of tenure to those sensitive to changes in population pressure, technology and economic forces” (Okoth-Ogendo, 1998, pp. 13, 14). It has continually converted a large proportion of state land (formerly Crown Land) back to customary land and introduced several new land rights. According to Mathuba (1992), land under the customary tenure system has been increased from 47% at independence to 71% of the country's land area while state land has decreased from 48 to 23%. The proportion of freehold land increased marginally from 5 to 6% during the same period. To avoid concentration of land into a few hands, no freehold land has been created since 1978. The Government has, instead, introduced new but innovative systems for leasing and managing both rural and urban land.

New land rights for urban areas

Before 1990, urban development activities were only permitted on state land. With a change in policy, owners of freehold farms around Gaborone, the capital city, have been able to establish townships, smallholdings or housing estates. State land in urban areas is allocated on two forms of leases only — namely, Fixed Period State Grant (FPSG) and Certificate of Rights (COR).

Fixed Period State Grant

Developed soon after independence, the FPSG lease system offers the holder a capitalised lease with all rents being paid at its commencement rather than periodically over the entire lease life. The state repossesses the land at the end of the stated period (50–99 years) without compensation for un-exhausted improvements nor commitment to renew the lease (Dickison, 1990). The holder may sell or otherwise transfer what remains of his/her grant period which leads to decline in land value as the termination date approaches to the extent that a “position is reached where it is not in the owner’s interest to further develop the land or even maintain the property” (Dickison, 1990, p. 26). However, the FPSG lease system was preferred in favour of freeholds because it pre-empted the build up to perpetual landlessness among the citizens.

Certificate of Rights

The COR lease system was introduced in the 1970s in order to provide the urban poor with secure land tenure while avoiding the complexities and costs associated with statutory land titles such as freeholds and FPSG (Government of Botswana, 1983; Dickison, 1990). COR leases have been extensively used in self-help housing projects and squatter upgrading schemes. Under the COR, leaseholder rights are usufruct for the sole purpose of erecting an owner-occupied residential house. Although the land rights conferred by the COR are perpetual and inheritable, financial institutions have not accepted them as collateral presumably because, in cases of default, lenders would have to seek state approval before disposing of property to make good the debts. A COR lease title may be converted to an FPSG provided the plot is title surveyed and a diagram thereof approved and registered by the Director of Surveys and Mapping.

New land rights in rural areas

With effect from 1970, hitherto customary land is governed by the Tribal Land Act of 1968 (Cap.32: 02) and its subsequent amendments. According to Mathuba (1989), the passing of the Tribal Land Act sought to modernise rural land administration and management by providing a written law for easy reference. The Act also sought to reduce public complaints in relation to land allocations

by chiefs and to promote social and economic development of all citizens of Botswana. She further notes that the “Act was never meant to uproot the [traditional] system by changing its working rules but to improve it” (Mathuba, 1989, p. 2).

To that effect, tribal or customary land is allocated under two lease systems — customary land grants and common law leases. Although Section 24(1) of the Act initially provided for the granting of freeholds (land ownership) to individuals, no person or corporate body was ever granted such title. The provision has since been deleted under Section 15 of the Tribal Land (Amendment) Act of 1993. However, the section continues to provide for conversion of tribal land to state land.

Customary land grants

The Customary Land Grants (CLG) lease system is in every aspect similar to the COR discussed above except that, the new customary land grants may be terminated on any of the following reasons:

- (i) failure to observe development/use restrictions attached to the lease;
- (ii) change of use or user of land without due authority;
- (iii) failure to use the land for a considerable period;
- (iv) the land is required for public interest including land redistribution.

Land rights under new customary grants are usufruct. Individuals allocated land are now issued with Certificate of Customary Land Grant (CCLG) as documentary evidence of the rights conferred to them. All unallocated land remains, in the traditional fashion, common property governed by traditional rules of access, usage and disposal.

Common law leases

All customary land grants may be converted into common law leases at the grantee’s initiative and costs and upon production of a diagram or plan approved by the Director of Surveys and Mapping. The leases may be annual, quinquennial or for longer duration. Upon expiry of a common law lease or cancellation of a customary land grant, the land reverts to the land board without compensation for any improvements effected by the grantee or his/her predecessor in title unless it was expressly thus agreed upon ab initio or the land board elects to pay compensation. Lease holders are, within six months after the termination of the lease, permitted “to remove any such improvements which can be removed without causing irreparable damage to the land...” (Tribal Land Act, 1968, Section 25 (b)).

New institutions

As summarised in Table 1, there are currently over 10 departments and agencies involved in the day-to-day

Table 1
Major Institutions Involved in Land Management and Administration

Level	Institutions	Major responsibilities	
National	Department of Lands	Acquire, dispose and administers state land Supervise and co-ordinate all land administration matters Allocation of Fixed Period State Grants	
	Botswana Land Information System	Valuation and leasing of property for and on behalf of the Government	
	Department of Surveys and Mapping	Computerised storage of all data on state land Mapping and cadastral surveying	
	Department of Town and Regional Planning	Approval of survey diagrams and plans Preparing land subdivisions and layouts on state and tribal/customary land Advise local authorities and land boards on land use and development control matters	
	Town and Country Planning Board	Receive and consider applications for planning and developing land within gazetted planning areas.	
	Registrar of Deeds	Examination, execution and registration of interests in land and endorsements thereof	
Sub-national	Land Tribunal	Hearing and determining appeals from land boards and against land board decisions. Enforcing decisions made by land boards	
	Self-help Housing Agencies (SHHA) (City, Municipal and Town Councils)	Administer and allocate state land under Certificate of Right (COR)	
	Land Boards	Develop and maintain inventory of COR leases Replaced chiefs, sub-chiefs and headmen in the administration and allocation of customary land rights Allocate and administer common law leases on customary land Develop and maintain inventory of customary land grants and leases	
	Local	Village Development Committees	Identification of community development needs Identification of development projects
		Land Adjudication Tribunal (defunct)	Formulation of self-help projects Arbitration of land disputes in COR areas

administration of land in Botswana. However, of particular interest to the present paper are the institutions established as a result of the land tenure reforms discussed above, namely, the Land Tribunal, Botswana Land Information System (BLIS), land boards and Self-help Housing Agency (SHHA).

Land tribunal

The Land Tribunal was established in 1995 to facilitate speedy processing of appeals against land board decisions. Until then, appeals were brought to the land boards themselves and later to the Minister — a process that was taking too long (up to 5 yr) to be concluded. As Mathuba notes, “Land boards are not judicial bodies and do not therefore, have jurisdiction to determine rights in disputes between individuals ... Land Boards [also] have a direct interest in the land under their jurisdiction. They should therefore not be judges in their own cause” (Mathuba, 1989, pp. 31, 32). Besides, land boards were unable to enforce their decisions to the extent that people took advantage of the weakness to allocate themselves pieces of land while others persistently ignored land boards’ decisions (Mathuba, 1989).

Based in Gaborone, the Land Tribunal is a mobile court presided over by a qualified lawyer. It receives and

determines appeals brought to it by land boards as well as appeals against decisions of any land board. Enforcement of the tribunal’s decision is the same as that of the Magistrate Court. Any party aggrieved by the decision of the tribunal has leave to appeal to the High Court.

Botswana Land Information System

The Botswana Land Information System is a unit under the Department of Lands responsible for keeping records on state land including all information on subdivisions, plot descriptions, applications, allocation, transfer and endorsements. The information is kept in a computerised or digital form for easy and fast retrieval and verification.

Land boards

Land boards were created under the Tribal Land Act 1968 (Cap.32:02) which transferred all powers to allocate and administer customary land from chiefs, sub-chiefs and headmen to the said land boards. Each chief was replaced by a land board and sub-chiefs by subordinate land boards. While land boards allocate and cancel land rights for all purposes under both customary and common law leases, subordinate land boards make customary land grants only. At present, there are 12 main land

boards and 38 subordinate land boards in the whole country. Each land board is a corporate body.

The composition of land boards has changed considerably since the 1970s. The first land boards consisted of the chief (ex officio) or his deputy, an appointee of the chief, 2 District Council representatives and 2 central government appointees. At present, land boards are composed of 12 members as follows

- (i) 5 members appointed by the minister from a list of 20 candidates elected by people living within the jurisdiction of the respective land board and submitted to him/her;
- (ii) 5 members appointed by the Minister;
- (iii) 1 member representing the Ministry of Agriculture;
- (iv) 1 member representing the Ministry of Commerce and Industry (Government of Botswana, 1994).

According to Mathuba (1989) the changes in the composition of land board members were required in order to improve the academic, health, etc. — ‘quality’ of membership. The exclusion of politicians and chiefs may have also been prompted by the desire to depoliticise land management and administration. The day-to-day management of land board activities is carried out by a team of experts headed by the Land Board Secretary appointed by the Minister in terms of Section 8 of the Tribal Land Act.

Section 11 of the Act requires land boards to consult the District Council on land policy matters and to implement policy directives from the President thereby giving room for tenurial innovations from both above and below (Bruce, 1981, p. 7).

Self-help Housing Agency (SHHA)

Every urban area with state land to be disposed of under the Certificate of Rights (COR) has a department — popularly known as Self-help Housing Agency (SHHA) — which provides the day-to-day administration and management of that land. SHHA departments are responsible for receiving and processing of applications for COR land; collection of service levy; processing of building material loans; as well as assisting and advising plot-holders on the planning and construction of their houses.

Acquisition of the new land rights

With the government’s moratorium on creation of new freehold land, ownership in land may only be acquired through subdivision of existing freehold land on a willing-buyer-willing-seller basis although the President has, according to the State Land Act (Cap. 32.1), compulsory acquisition powers over such land.

Acquisition of Fixed Period State Grants

Prior to 1990, pieces of state land to be leased under the FPSG system were auctioned to the highest bidder.

To ensure that state land is allocated equally to all Botswana citizens, the State Land Allocation and Advisory Committee (SLAAC) allocates plots on first-come-first-served basis using data from the Botswana Land Information System (BLIS). On acceptance of the offer and production of adequate financial evidence or reference to develop the land, the Attorney Generals’ Chambers processes the FPSG title and submits it to the Registrar of Deeds for execution. Acquisition of FPSG titles is a long process that may take several years.

Acquisition of Certificate of Rights

Up to 1992, all applications for plots to be allocated under COR system were received and processed by SHHA offices in the respective urban council. However, due to apparent abuses through fronting, poor record keeping and unauthorised transfers coupled with political demands, the COR system has been discontinued. With effect from 1992, all low-income areas are fully serviced and leased out on FPSG system. SHHA offices continue to receive and process applications for such plots for onward transmission to the Botswana Land Information System (BLIS) for verification. The allocation is carried out, officially, by the SHHA Management Board. On payment of stipulated fees and money, BLIS generates a duly completed FPSG certificate for signing by the Senior State Council (Land) and submission to the Registrar of Deeds for execution.

The introduction of BLIS has extended rather than shortened the land alienation process for low-income earners. It has also effectively transferred land allocation powers from municipal councils to central government. The former have now become “rubber stamping” agencies. BLIS is likely to fail to eradicate the fronting problem as applicants may continue using their children, relatives and friends as before. As long as serviced land is in short supply and unaffordable or subsidised, people will find ways to beat the system.

Acquisition of Customary Land Grants

Land Boards use two different systems in the allocation of tribal land — one for planned areas and another for unplanned areas. In unplanned areas, allocation takes place during a meeting held at a site to be alienated and attended by the applicant, local leaders, neighbours and any other interested persons. A member of the land board allocates land by measuring and pointing out the boundaries of the plot to the allottee. If neighbours or any other party raises no objections, then the allocation stands and a Certificate of Customary Land Grant issued soon thereafter. In planned areas, developers submit their applications for land to the respective land board indicating the type of plot required and the intended land use activities. Then, the board allocates demarcated or surveyed plots on first-come-first-served basis.

Land inventory

Land registration, which may be defined as a formal and legally binding process that produces and maintains an authoritative record of land ownership and transactions has been reserved for freeholds, common law leases and Fixed Period State Grants. Records on customary land grants and certificate of rights titles are maintained in land inventories kept by the responsible land board or SHHA office. A land inventory is a less formal way of keeping records on land rights and their transfers. While Land Registration is governed by the Deeds Registry Act, 1960 (Cap. 33:02), land inventories are not supported by any form of legislation. Land inventories are, therefore, merely intended for use as administrative aids by councils and land boards in their record keeping and land use planning activities. They, however, serve as a basis for formal land registration, adjudication and settling of land disputes. Most inventory records are incomplete and generally inaccurate giving room to abuses and malpractice in land rights held under customary or COR systems.

Assessment of land reforms in Botswana

As hinted earlier, Botswana's land reform initiatives have been hailed as being exemplary. Passing judgement on various land reforms adapted in various eastern and central African countries, Professor Ng'ong'ola had this to say:

Botswana's legislation, in my opinion, provides a better legal framework for the management of the intractable problems customary land reform ... [because] first, the vesting of title in land boards and the land board system of administration, can be adapted for application where it becomes politically desirable and feasible to rein back excessive powers of corruptible customary land administration functionaries ... the position is preferable to the vesting of title to customary land in the President or his Ministers and surfeiting them with excessive, arbitrary powers of land control. [second] Land boards can also be mandated to retain or to facilitate the transformation of the customary land tenure as and when the situation demands... (Ng'ong'ola, 1996, p. 413).

Professor Bruce (1981, 1998) made similar remarks almost 20 years ago and again two years ago. These views are based on several positive observations on Botswana's land reform initiatives. First, the government has maintained continuity by retaining and respecting the land rights and other tenurial provisions granted by the colonial administration while limiting absolute and relative increase of private land ownership. Furthermore, by promoting subdivision of freehold land into townships and

housing estates, the government has indirectly facilitated the redistribution of privately owned land while avoiding the expenditure of lots of public funds in acquiring the same for urban development. Thus, the number of freehold title-holders has increased without corresponding increase in acreage.

Second, and related to the above and Ng'ong'ola's observation, the government has been able to redistribute state land to individuals and companies without permanently extinguishing communal land ownership. The new land rights are secure, generally equally accessible and flexible. They can be upgraded to superior titles from, for example, non-transferable Certificate of Right to Fixed Period State Grant. Third, and as a result of the above two factors, the government has been able to pre-empt landlessness among its present and future populations. Fourth, through regular reviews, amendments and introduction of state of the art technologies (e.g. digital storage of land records), the government has been able to maintain fair, transparent and effective land administration machinery. The inclusion of chiefs, deputy chiefs or their representatives in the composition of first generation land boards was a commendable thought as it provided a smooth transition — the later problems not withstanding.

Botswana's exemplary and sustained achievements in land reforms may be attributed to prudent use of ample mineral revenues, tolerant multiparty democracy, extensive grass root consultations and general respect for law and order. Despite the government's cautious, pragmatic and transparent approach in introducing land reforms, a number of problems have surfaced and persisted for quite some time now. The major problems have centred on the interpretation or misinterpretation of land tenure systems and the varying rights and benefits they give to different sections of the country's population.

Ambiguities in the Tribal Land Act

Before the 1993 amendments, the Tribal Land Act was ridden with ambiguities relating to land ownership and entitlement. The most critical confusion pertains to land ownership in tribal/customary areas: do land boards own land? Or the tribe? Or individuals? In its original formulation, Section 10(1) of the Act stated that

All the right and title to land in each tribal area listed in the first column of the First Schedule shall vest in the land board set opposite thereto in the second column of the First Schedule in trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting the economic and social development of all the peoples of Botswana.

First, it appears legislators wanted land boards to be 'trustees' and not "owners" of land under their jurisdiction. Second, as Mathuba (1989, pp. vi, 14, 15) argues,

trust for the benefit and advantage of the tribesmen of that area implies that land could only be allocated to people belonging to a particular tribe or ethnic grouping. Section 20(1) tends to reinforce the restrictive provision by restraining land boards from granting land to any person who is not a tribesman without the written consent of the responsible Minister. However, the last words in Section 10(1) — all the peoples of Botswana — appear to be inclusive of all citizens regardless of ethnic grouping or affiliation.

While Section 10(1) tried to vest land ownership into land boards or tribal communities, as was the case before the Act, the next sub-section — Section 10(2) — divested some pieces of land from the boards. The latter sub-section provided that “Nothing in this [Section 10] shall have the effect of vesting in a land board any land or right to water held by any person in his personal and private capacity.” According to the Presidential Commission of Enquiry, the section has been interpreted to mean that “all land that was allocated prior to the existence of the Land Boards is held by individuals and their heirs in the private and individual capacity ... in perpetuity and can do anything they like with it without interference from the Land Board” (Government of Botswana, 1992a, p. 91). Landholders, some ministers, lawyers and the Attorney General shared the above interpretation, according to the same commission.

The ambiguity led to the High Court case between Kweneng Land Board and a certain Kabelo Matlho and Pheto Molthabane. The land board alleged that Kabelo Matlho had, without its authority, occupied a piece of land in the tribal area of Mogoditshane, west of Gaborone, and sought an interdict to evict him (Ng'ong'ola, 1993). Pheto Molthabane, who had inherited the land from his late father and given part to Kabelo Matlho, argued that he was the rightful owner in terms of Section 10(2) while the land board also believed it owned all the Kweneng Tribal Land as per Section 10(1). The court ruled in favour of the respondent, as did the Court of Appeal later.

Following the outcome of the above case and the “Report of the Presidential Commission of Enquiry into Land Problems in Mogoditshane and Other Peri-urban Villages”, Section 10(2) of the Tribal Land Act has been deleted as per Tribal Land (Amendment) Act, 1993 Section 7(b). Section 7(a) of the said amendment substitutes the words ‘tribesmen of the area’ with “citizens of Botswana” in Section 10(1). The latter amendment means that tribal land is no longer reserved for people of respective tribes. In fact, the amendment has the effect of “nationalising” all customary land. As a result of the latter amendment, people from all parts of the country are increasingly applying for “customary land” on the fringes of cities and major town such as Gaborone, Francistown and Lobatse.

The deletion of Section 10(2) has not eliminated the ambiguity as demonstrated by the appeal case between Tati Land Board and one Walter Moroka brought before the Land Tribunal in 1997. Walter Moroka lodged the appeal on the grounds that Tati Land Board was allocating residential plots on his agricultural field without consulting him. He argued that he inherited the fields from his father who had owned it in his personal and private capacity and occupied it without interruption since 1953. He further argued that the field was never vested in the Tati Land Board (Moroka's ploughing..., 1998). On the other hand the Tati Land Board argued that, given the deletion of Section 10(2), it owns the land and did not need Walter Moroka's consent. The board further argued that only fields held under common law grants were not subject to allocation by the board. The tribunal ruled in favour of Walter Moroka mainly on the grounds of inadequate evidence of earlier consent by the appellant and Land Board Resolution. The land board is, however, appealing against the ruling.

Another form of ambiguity relates to the extent to which provisions of the Tribal Land Act are or are not consistent with customary land tenure rules especially with respect to cancellation and transfer of land rights. While land boards have powers to cancel land rights on several grounds (Section 15 of the Act), land rights may only be cancelled for failure to use or occupy land for a long period (Government of Botswana, 1992a, p. 2). Under customary land tenure systems, land has no monetary or exchange value yet pieces of land in some tribal areas are being transferred at exorbitant prices after minor improvements (e.g. clearing bushes, fencing or erection of toilet) or conversion to common law lease as evidenced by Walter Moroka and Kabelo Matlho cases cited above. As argued by the Presidential Commission (Government of Botswana, 1992a), the war between land boards and peri-urban landholders is but a reflection of the struggle to control and dispose of land for pecuniary gains. Similar observations have been made by Shivji (1998) and Kombe (1994) on Tanzania and Ng'ong'ola (1996) on Botswana.

With the various tenure systems permitted to operate within the same settlement and, often, within the vicinity of each other and/or the same piece of land, land developers, owners, the public and, to some extent, land administrators are inherently confused about which tenure is applicable where and when. The danger here is that the country runs the risk of “having too much land law” (Okoth-Ogendo, 1998, p. 10).

Ambiguities in the Fixed Period State Grant and Certificate of Rights

Government documents on allocation and acquisition of state land speak of sale, purchase and price of state land while in reality what is meant is “lump sum rental

payment". Such documents include "Notes for Applicants for Purchase of State Land in Urban Areas" (Government of Botswana, 1990a), forms for "Application for Purchase of State Land" (Government of Botswana, 1990b) and samples of the "Deed of Fixed Period State Grant" (Government of Botswana, n.d.). A number of people interviewed by the author believe they are "buying" the land forever and not for a fixed period. While land reverts to the state at the expiry of the FPSG issued on state land, it is not clear to whom the land reverts with regard to FPSG converted from COR or customary land grant. Does it automatically revert to the original allottee even if the rights were sold or otherwise transferred during the validity of the lease period? The confusions need to be clarified before the first FPSG expires in about 20 years' time.

Sale and self-allocation of customary land

Having realised that land has an intrinsic exchange value, some headmen and land board members and/or technical staff have tended to unconstitutionally allocate land to themselves, relatives and friends for a fee (McCormick, 1982; Government of Botswana, 1992a). Some individuals have built houses on vacant land not formally allocated to them while owners of agricultural fields in peri-urban villages have also tended to subdivide the fields and transfer or sell the resultant plots to prospective house developers. Payments have been as high as Pula 30,000 (equivalent to US\$6000 in 1999) depending on size, location and nationality of the buyer. Some plot sellers accept goats or cattle for payments while others ask buyers to build them houses (Government of Botswana, 1992a). A recent study of Mogoditshane (a peri-urban settlement adjacent to Gaborone) by Malibala (1999) revealed that over half (53%) of the residents interviewed bought, self-allocated or otherwise informally acquired their residential plots. Only 31% were formally allocated plots by the respective land board while 16% said they inherited the plots.

The informal acquisition of peri-urban customary land for housing and other urban-related activities started in the early 1980s but gained momentum around 1988 due to land boards' inefficiencies and laxity. Other contributing factors have included inadequate supply of urban serviced land and the suspension of allocation of COR plots between 1990 and 1993 (Kalabamu, 1993). At present, newspapers and estate agents openly carry advertisement for sale of peri-urban plots for housing and other activities on a daily basis.

Differentiated access

Land and land rights in Botswana are not readily available to whomsoever is in need or prepared to pay

the price but to people who belong to a particular category or income group. Indeed, even freehold land may not be freely available due to the restrictions imposed by the Land Control Act (Cap. 32:11). The Act provides that non-citizens may acquire freehold land only if there is not a single citizen objecting or interested in the property and only after obtaining the responsible minister's consent. The minister is entitled to withhold his/her consent even if no person objects.

FPSG land leases are available, in principle, to any citizen. In practice, it is extremely difficult for couples who already own a plot/house on state land to acquire additional such leaseholds. In order to provide equal opportunities, additional plots are allocated when there are no applicants wishing to acquire their first plots. Plots leased under the COR system are reserved for low-income earners who have lived in a particular urban area for a period of more than six months. Until the amendment of the Tribal Land Act in 1993, only people belonging to a particular tribe could acquire land in that given tribal area. With the amendment, any citizen may now acquire land in any tribal area. The unequal access has partly contributed to booming land market in peri-urban villages (Government of Botswana, 1992a) and fronting in self-help urban housing areas (Government of Botswana, 1983, 1992b). 'Fronting' has been defined as the use, at a fee or for free, of a poorer relative or acquaintance in the application for a plot that is effectively developed by the "real" owner and later "officially" transferred to him or her (Government of Botswana, 1983, p. 194). It is estimated that fronting accounts for about 10% of all land right acquisitions in self-help housing areas.

Differentiated benefits

One other problem related to the co-existence of several land rights and tenure systems relates to the benefits — real or perceived — derived by land holders. While holders of common law titles may readily sell or otherwise transfer their land rights, holders of customary land rights and COR titles may not. The latter may not even use their titles as collateral to secure loans from commercial banks. Some land rights (freeholds, customary land rights and COR) are inherently perpetual while others are terminal after a period of 50–90 years. The terminal nature of current common law leases coupled by lack of provision for automatic renewal and commitment to compensate for un-exhausted improvements by the state or land board renders the leases increasingly unacceptable as collateral by moneylenders as the terminal date approaches. Selling or otherwise transferring land rights becomes difficult in the last years of a lease life. Thus leaseholders cannot readily use them to secure adequate loans for maintaining or substantially improving the properties.

The above concerns affect investors' decisions and confidence quite considerably. Freeholds are the eternally most secure and preferable. Fixed Period State Grant leases are the least preferred in terms of long-term investments. Even parents who want to invest in property for the benefit of their children and grandchildren may find 50 years a very short period. For companies desirous to invest billions in land developments, 90 years is nothing. On the other hand, the major shortfall of customary and COR rights lies in their unacceptability by financial institutions and in law. Restrictions on their transferability reduce their "security" further.

Loss of revenue

The government is losing large sums of money by not selling land rights or collecting rent continuously or tax on the ubiquitous informal land right sales. The present practice of collecting rentals up-front robs "the government of potential revenue from [land] value appreciation while at the same time placing undue financial burden on the grantee and weakening his [or her] capacity to develop" (Government of Botswana, 1997, p. 119). Besides government does not charge the true value of land. It charges estimated "market prices" for industrial and commercial plots; full cost recovery prices for high-income residential plots; and "affordable prices" for middle- and low-income residential plots (Government of Botswana, 1991, p. 425). Full cost recovery prices are only inclusive of costs incurred by the government to service and administer the land but exclude land acquisition costs incurred by the government. Affordable prices refer to what the allottee is able to pay without the benefit of a subsidy. With inflation and general decline in money value these prices become obsolete within a short period — often before the plots are allocated. Allottees of both state land and tribal land have capitalised on this dichotomy and made a fortune by sometimes disposing of their rights before any substantial developments. There have, however, been moves to make land sales by individuals illegal (Mathuba, 1989, p. 26; Government of Botswana, 1992a *passim*).

Top-heavy land management structures

Despite the three-tier land management structures indicated earlier in Table 1, national level institutions wield more powers than those below them do. Central government has been increasing its control over sub-national land structures. First, the minister currently appoints, directly and indirectly, 10 of the 12 land board members plus the chief executive officer — the Land Board Secretary. Section 6(3) empowers the minister to dismiss any member of the land board. There have also been suggestions for the minister to be given powers to dissolve entire land boards when necessary (Mathuba, 1989, p. 27). Ac-

cording to Section 11(2) of the Tribal Land Act, the Minister already has powers to request the President to give specific or general orders to any or all land boards.

Second, local authorities — district and urban councils — play an insignificant role in land management and administration. Land boards are simply required to consult District Council when formulating land policies (Section 11(1) of the Tribal Land Act). With the introduction of BLIS and a moratorium on COR, the role of urban councils in the management of state land has been substantially diminished. Thus local authorities, which are de facto planning authorities in their areas of jurisdiction, do not control one of their major resources — land.

Third, as recently reported, land "matters which should be decisively handled by the Director of Lands tend to filter upwards as far as the cabinet ... resulting in indecision and unnecessary delays" (Government of Botswana, 1997, p. 129). Both the 1983 and 1992 reviews of the self-help housing agencies noted that the central government "maintains a very tight control over local government" and recommended "progressively strengthening the city and town councils and increasing the level of discretion allowed to them" (Government of Botswana, 1992a, p. 81). The recommendations have to date not been implemented.

Factors contributing to above problems

The above land problems have been blamed on many factors. The inefficiency of land boards has severally been attributed to lack of understanding of the Tribal Land Act and its provisions by land board members and the general public; low level of education of land board members; inadequate support facilities (notably transport, office space and equipment); lack of sufficient trained personnel; and poor relationship between land boards and the general public (Mathuba, 1989; Government of Botswana, 1992a). Shortfalls in the management of urban land are blamed on lack of capacity and responsible personnel at local government level (Government of Botswana, 1992b, p. 81). There are, however, other fundamental reasons.

First, as Bruce notes, a system which administratively allocates land as a valueless resource — while it is indeed very valuable — provides extraordinary opportunities for all forms of abuse and corruption on the part of allocators and potential beneficiaries (Bruce, 1998, p. 45). In Botswana, the situation is complicated further by the co-existence of tenure systems which recognise the intrinsic value of land and other systems which stick to the traditional beliefs that land has no value unless it has been improved. Reality is, regardless of one's beliefs or convictions, land has value which varies according to location, accessibility, demand, natural characteristics, transferability, zoning, current use, use of adjacent properties and other factors.

Secondly, land boards have to date enormously relied on chiefs, sub-chiefs and headmen in the allocation of land thereby undermining their own authority. In other words, the new did not replace nor imbed the old but created a two-tier system with the traditional administrators continuing to wield power at grassroots levels. To date, land boards depend on chiefs, sub-chiefs and headmen to establish land ownership and occupation who have, on occasions, misled them. Land boards should never have expected full loyalty and co-operation from the system they disempowered.

Thirdly, land boards and urban councils have not kept proper records of their allocations. Land boards have often not issued certificates as required nor entered all new allocations and changes of land rights ownership into ledgers. In the matter referred to earlier on, the Land Tribunal ruled in favour of Walter Moroka partly because the Tati Land Board did not have complete records of its meetings and allocations in the area of contention (Botswana Daily News, April 28, 1998).

Fourth, there has been excessive emphasis on access rather than ownership of land in Botswana. Both the Tribal Land Act and the Certificate of Rights were introduced to facilitate easy access to rural and urban land, respectively. The latest amendment to Section 10(1) of the Tribal Land Act has removed tribal boundaries in accessing land and effectively created equal access for all citizens from all corners of the country. At the same time, the government has been anxious to limit absolute land ownership. The establishment of impersonal land boards may have been informed by the desire to pre-empt feudalism and the amassing of land by individuals. Non-ownership of land with some form of fee simply limits commitment to land in terms of conservation, wise utilisation, management and administration more so when it is declared valueless yet over burdened with restrictions.

It is practically impossible, and extremely costly, to remove modern fixtures such as bridges, buildings, factories and other long-term improvements without being insane or causing irreparable damage to land and property itself. Times have changed. Improvements are no longer limited to annual crops, footpaths and mud houses. It is time for land rights and tenure systems to be allowed to make another bold step forward.

Fifth, it appears land policies and programmes in Botswana, as elsewhere, have been influenced by some form of class struggles. The passing of the Tribal Land Act, transferring of land allocation powers from chiefs to land boards, increased control over land boards and local authorities, the moratoriums on freeholds and CORs, lack of full support and co-operation from chiefs and headmen, etc. are all indicative of silent struggles between the small landed aristocrat, traditional leadership, grassroots powers and the national leadership.

Prospects

Although the Botswana Government has been relatively cautious and innovative in dealing with land matters, the time is ripe to make other bold reforms to satisfy 'modern' socio-economic and popular demands. The current single most important question in Botswana, and elsewhere in the region, is whether to formalise or legalise free-market oriented transfer of all types of land rights. If the answer is NO, then what should be done to eliminate the widespread informal land markets and lawlessness that abound in and around big cities? If yes, then what are the requirements and procedures necessary to ensure a smooth and effective and just transformation? The author's preferred answer is in the affirmative mainly because all countries in the region have to date failed to suppress the evolution and growth of informal land markets. The informal land markets are, to a great extent, the cause of the unplanned and unserved (squatter) settlements that dominate towns and their respective peri-urban areas in Kenya, Tanzania, Zambia, Botswana, Lesotho, etc. It is not wise to continue burying our heads in the sand and consoling ourselves that land is not being sold.

Are people selling land? As Shivji (1998) notes, people are not selling land but their rights and interests in land. There are a number of reasons that encourage land rights holders (and especially those in peri-urban areas) to subdivide their farms for sale. First, peri-urban land is under pressure from expanding cities to convert from agriculture to residential and industrial activities in line with the location rent theory. The closer to the city or town boundary, the higher the pressure and value of land; and the bigger the city the higher the pressures. Second, residents and owners of peri-urban land are aware of the pressure and demand for their land. They are also aware that the government will sooner or later take their land, subdivide it and allocate it to other people. They are further aware, from previous experiences, that they will be either relocated to far off places or given minimal compensation for un-exhausted improvements and/or allowed to take away building materials from demolished activities. The compensation is always minimal. Alternative plots given do not bear relationships in value with their dispossessed plots. Thus, for owners the rational thing to do is sell now rather than wait for relocation and/or worthless compensation (Shivji, 1998). Third, most landowners are often employed in more lucrative jobs than peasant agriculture and are, therefore, less interested in the agricultural value of their land holdings — the market value far exceeds the agriculture use value. Fourth, some of the landowners and allottees of state land plots lack financial resources to develop the plots and find it wiser to sell before the land is repossessed. There is a general tendency for people to apply for the cheap state or communal land hoping they will be able to develop

them as and when allocated or because it is simply what every one is doing. In other words, application for land is not always matched with willingness and ability to develop the land — it is only speculative. Finally, some sell their land rights because they need money for other pressing or priority needs - illness, school fees, dowry, housing, etc.

Buyers are also satisfied with their products despite the high risks involved in acquiring land on the informal market or through fronting. Some sellers have often failed to honour sale contracts, others enter into multiple sales for each plot while others sell non-existent plots yet more buyers continue coming on. Buyers are desperate — they want land to build their houses, shops, industries, etc. now and not tomorrow or next year — hence the high risks undertaken. Once structures come up, then the new owners start feeling secure. The more the developments one has on the plot, the more secure one feels.

Will selling of land rights lead to landlessness? Given the size of plots required for housing, industrial development, horticulture, commercial activities, etc., selling of land rights for urban development can never create a landless population. It is true some poor people will be pushed away from central areas but they will have a choice — to dispose of their rights at high prices or continue living in inner cities as poor residents. In any case, governments would sooner or later relocate them to urban peripheries when they reacquire their land for other activities. The free transfer of land rights empowers plottolders and leads to robust and efficient land markets which, in turn, promote efficient and best use of land. Other benefits include increased revenue in the form of fees levied on land transfers. The fees may be ploughed back into servicing more land or subsidising low-income plots.

Ironically, at present there exist in Gaborone, Francistown, Lobatse and other towns large numbers of serviced urban land plots which have been allocated but undeveloped for many years despite long waiting lists of applicants. The delays in developing plots are partly due to plots having been allocated to people who qualified on first-come-first-served basis rather than on capability to develop them. To eliminate fronting and under-utilisation of resources, plots should be allocated or 'sold' to those who are able and ready to develop them. Holders of large undeveloped or underdeveloped land should be taxed accordingly. The objective should be to collect so much revenue to facilitate servicing of more land while minimising speculation.

Recommendations

Future land reforms in Botswana and the rest of the region should take cognisance of people's desire to realise the enhanced value of their land holdings and the re-

quirements of long term commitments to land. The belief that bare land has no monetary value is not in tune with capitalist-market economies that characterise the region. Restrictions on access to various categories of land should be removed because they disempower landowners, promote corruption and lead to inefficient use of land in the long run. People should be given the freedom to enter and exit the various sub-categories of the land and property market. I believe there is nothing wrong for a rich family to live in a low-income area if it so wishes. In the light of the foregoing, my specific recommendations for future land reforms in Botswana are as follows:

- (a) Amend policies and existing legislation to provide for free transferability of land rights for residential, commercial, industrial and community facilities. Land reserved or used for agricultural activities should be excluded until rezoned by responsible authorities.
- (b) Initiate a process of adjudicating, registering and digital storage of existing and future land right records in all urban areas, peri-urban settlements and villages recently declared as planning areas. The process should be similar to that utilised during the upgrading of squatter settlements — i.e. through consultation and consensus building.
- (c) Develop land use planning, servicing and alienation partnerships between land boards, district councils and various land rights holders. The partnership will require that different land holdings be consolidated and treated as one large unit for the sole purpose of land use planning and servicing. Once land has been serviced, affected rights holders will be given a certain proportion (e.g. 30%) of the resultant plots and will be at liberty to retain or immediately sell to prospective developers. The remainder should be disposed of by council and/or land board in accordance with financial and other material contributions by either party. This approach is based on the experience of land pooling and readjustment programme carried out in some Asian countries and reported by Archer (1989) among others.
- (d) All plots acquired on state land should be subject to a service levy and rent fees to be paid periodically which means there shall be no more lump sum payment of rent up front. This will enable developers to spread the land costs and invest more of the immediately available funds in the erection of buildings. It also provides for regular rental reviews to reflect enhanced land values, inflation and currency depreciation. The Botswana Land Information System (BLIS), which is currently under-utilised, should be used to manage rent adjustments and payments as well as track down defaulters.

- (e) The Fixed Period State Grant should be amended to provide for automatic renewal of leases unless there exist strong mitigating factors or public interests.
- (f) Waiting lists notably those in respect of middle- and high-income groups should be replaced with lists of potential buyers who will be required to submit evidence of immediate availability of funds and/or loan together with their applications.

The above approach has several advantages over current practices. First, it provides for a partnership between central government, local authorities (land boards and municipal/district governments) and local communities. Ideally, central government departments and ministries should be responsible for formulation of general policies and guidelines of national interest. Sub-national level institutions — land boards and urban councils — should be given responsibility to independently initiate, plan, implement and generally manage land within their jurisdiction. Secondly, probably most important, it avoids disruption of existing communities and promotes grass-roots level democracy. It is thus politically and socially acceptable. Third, it saves public funds that are usually required to pay compensation relocation disturbances and structures to be demolished. Fourth, it empowers people — financially and democratically.

Conclusion

The government of Botswana has to date adopted a pragmatic approach to land reform by avoiding revolutionary and wholesale replacement land reforms that have failed to take root in other countries. Despite introducing statutory land rights in rural areas, it has upheld the prevalence of right of avail. At the same time it has launched exclusive programmes for assisting income groups and categories in urban areas. While the reforms have worked well so far, it now appears that there is too much land law resulting in some form of confusion especially in peri-urban areas to which government has reacted by increasing its control over land boards and councils. Contemporary land tenure problems in Botswana, as elsewhere in the region, cannot “be fully resolved by piecemeal and contradictory process of judicial law making” (Shivji, 1998, p. 31). My considered view is that the long-term solution lies in introducing further land tenure reforms, in particular, the free transfer of land rights. Land, especially land for human settlement, should be leased, sold, transferred, taxed, etc. just like food, clothing, cattle, cows or any other commodity. The multiplier effects of a capitalist (not feudalistic) oriented land market will boost the economy, encourage housing development and promote peace and order in peri-urban communal land settlements.

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